



**Office of the Attorney General
State of Texas**

January 22, 1993

DAN MORALES
ATTORNEY GENERAL

**Honorable Bill Turner
District Attorney
Brazos County
300 East 26th Street, Suite 310
Brazos County Courthouse
Bryan, Texas 77803**

Letter Opinion No. 93-5

Re: Whether a county commissioner or other members on the county commissioners court may vote to approve the sheriff's decision to hire the commissioner's nephew as a deputy sheriff (ID# 18353)

Dear Mr. Turner:

You ask whether a county sheriff may hire for employment as a deputy sheriff the nephew of a county commissioner. The nepotism statute, V.T.C.S. article 5996a, prohibits a county commissioner as a public "officer" from appointing, voting for, or confirming the appointment of a person who is related to him within the prohibited degree, or who is related within the prohibited degree to "any other member" of the commissioners court.

The question you pose was addressed in Letter Advisory No. 116 (1975), which declared that on the basis of V.T.C.S. article 3902 the commissioners court and all of its members were specifically enjoined from attempting to influence a hiring decision by another county official. Because of this prohibition, a sheriff could hire as an employee a relative of a county commissioner without violating the nepotism statute.¹ Article 3902 has been repealed and codified as section 151.004 of the Local Government Code which provides:

The commissioners court or a member of the court may not attempt to influence the appointment of any person to an employee position authorized by the court.

Thus, since members of the commissioners court are specifically precluded from participating in the sheriff's hiring process, it necessarily follows that they have no role in that process for purposes of the nepotism statute.

¹For purposes of this opinion, we need not decide whether the nepotism statute would preclude the hiring of a relative of a county commissioner to work as an independent contractor in the sheriff's office or in the county jail. See Attorney General Opinion DM-111 (1992) at 2.

Since the statutory basis for the decision in Letter Advisory No. 116 is still extant, and since we are not persuaded that the rationale of that opinion is incorrect, it is our opinion that a sheriff is not prohibited from hiring for employment as a deputy sheriff the nephew of a county commissioner.² We caution, however, that V.T.C.S. article 5996c prohibits the practice of trading and similar evasions of the nepotism law. See Letter Advisory No. 116.

S U M M A R Y

Since members of the commissioners court have no authority over the hiring and firing of employees of the sheriff and are specifically prohibited from acting in any way to influence the employment of such persons, a sheriff is not precluded from hiring for the position of deputy sheriff the nephew of a county commissioner.

Yours very truly,



Rick Gilpin
Deputy Chief
Opinion Committee

²Attorney General Opinion JM-801 (1987) is not to the contrary. In that opinion, this office held that the nepotism statute prohibits an *ex officio* road commissioner from hiring the son of another commissioner. In that situation, the ultimate authority to hire and fire rested with a fellow commissioner acting *under the direction of the commissioners court* rather than with an independently elected county official.